IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 727 OF 1989

1. Sureshchandra Prakashchandra Mehta,
2. Subhashchandra Prakashchandra Mehta,
3. Smt. Lalitabai Prakashchandra Mehta, since deceased, per L.Rs. Petitioners Nos. 1, 2 and 5,
4. Vidyachandra Raoji Mehta, since deceased, per L.Rs.
   A) Shirish Vidyachandra Mehta,
   B) Bahubali Vidyachandra Mehta,
   C) Smt.Bakulabai Vidyachandra Mehta,
   D) Mrs. Rohini Shreekant Doshi,
   E) Miss Tanuja Vidyachandra Mehta,
5. Miss Sujata Prakashchandra Mehta,
6. Smt. Kantabai Arvind Shah ... Petitioners

versus

1. Anandrao Bhimshankar Thobade,
2. Vimal Siddhappa Thobade,
3. Bhagirathibai Bhimashankar

Thobade, since deceased, per
L.Rs. :
A) Mahesh Bhimashankar Thobade,
B) Sudhir Bhimashankar Thobade,
4. Mrs.Shakuntalabai Nagappa Gunge,
since deceased, per L.Rs.:
a) Rajshekhar Nagappa Gunge,
b) Anil Nagappa Gunge,
c) Sunil Nagappa Gunge,
5. Mrs. Rohini Rameshchandra Jable.. Respondents

...

Mr. N.V. Walawalkar, for the Petitioners.
Mr. A.A. Kumbhakoni, with Mr. Tejas Deshmukh,
for Respondents Nos. 1 to 5.

...

CORAM : A.M.KHANWILKAR,J.

15th July 2004

ORAL JUDGMENT :

1. This writ petition takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal dated July 26, 1988 in Revision No. MRT-SH-VII-26/85(TNC.B.218/85). Briefly stated, the lands in question are agricultural

lands bearing Survey Nos. 25A and 25B situated at village Parmeshwar Pimpri, in Solapur district. Late Raoji Bapuchand Mehta was the original owner in respect of the suit land. The Petitioners claim to be successors in interest of the original owner. The Respondents, on the other hand, claim that their predecessor Bhimashankar Sidramappa Thobade, was the tenant in the suit lands. It is not in dispute that partition suit was instituted between the heirs of late Mr. Raoji Bapuchand Mehta in which proceedings, the Civil Court was pleased to appoint Court Receiver. The predecessor of the Respondents, Bhimashankar, is stated to have been appointed by the Court Receiver to continue to cultivate the suit lands on ek sali lease. The civil proceedings between the heirs of late Raoji Mehta were finally disposed of consequent to which the Court Receiver handed over possession of the suit lands to the Petitioners on 26thJune 1974. It is the case of the Petitioners that the tenants failed to give intimation to the Petitioners within 1 year from 26th June 1974, which has resulted in statutory purchase of the suit lands in favour of the tenants becoming

ineffective. On that basis, an application came to be filed before the Tenancy Authority by the Petitioners for issuance of order against the tenants to restore possession of the suit lands to the Petitioners. In the application for possession, two grounds have been asserted. The first ground is that the tenants are in possession of land in excess of ceiling limits, for which reason, they are not entitled to purchase the suit land and the purchase has become ineffective. The second reason stated in the application is that the tenants have failed to send intimation within one year from the date of Petitioners taking over possession of the suit lands on 26th June 1974, as a result of which the purchase has become ineffective. This application was tried before the tenancy authority and the tenancy authority, by judgment and order dated March 3, 1977, allowed the application preferred by the Petitioners answering both the aforesaid grounds in favour of the Petitioners. The matter was carried in appeal. Even the appeal Court answered both the grounds in favour of the Petitioners. However, for the first time, the revisional Court set

aside both the decisions, and, instead, dismissed the application preferred by the Petitioners on the reasoning that the tenants have become deemed purchasers on the tillers' day i.e., 1st April 1957 and, therefore, the question of sending intimation did not arise in the fact situation of the present case. Insofar as the ground of holding with the tenants in excess of ceiling limit is concerned, the revisional Court also proceeded to reverse the finding recorded by the two authorities below. It is this decision, which is subject matter of challenge in the present writ petition.

2. Mr. Walawalkar, for the Petitioners, contends that the Tribunal has exceeded its jurisdiction in interfering with the finding of fact reached by the two authorities below. He submits that the reason in relation to both the grounds referred to above as recorded by the Tribunal cannot be sustained and the conclusion reached by the two authorities will have to be affirmed.

3. On the other hand, Counsel for the

Respondents-tenants has supported the conclusion reached by the Tribunal contending that there is no reason to interfere with the said conclusion having regard to the fact situation of the present case.

4. Having considered the rival submissions, I shall first deal with the argument in relation to the ground, which has weighed with the two authorities below to hold that the tenants ought to have given intimation within one year from 26th June 1974, which resulted in purchase becoming ineffective. I find substance in the argument of the Respondents-tenants that there was ample material on record to hold that the predecessor of the Respondents was in possession of the suit land as tenant even before 1944 when the Court Receiver took possession of the suit lands and inducted him on ek sali basis. The Tribunal has, in fact, proceeded on that assumption. That assumption is reinforced from the decision of our High Court in Civil Revision Application No. 97 of 1967 between Shri Raoji Motichand Estate Court Receiver in Suit No. 348/37 of B.V. Mahajan, Sholapur v. Bhimshankar

Sidanna Thobde decided on 3rd October 1972. In para 4 of the said decision, it has been unambiguously observed and a finding has been recorded by this Court that the predecessor of the Respondents was cultivating the suit lands as tenant even before 1944 when the Court Receiver took over possession thereof and inducted him on ek sali basis. That finding between the parties in the previous proceedings would bind not only the parties, but the tenancy authorities as well. In that sense, the Respondents are justified in contending that their predecessor was cultivating the suit lands as tenant prior to 1944 when the Court Receiver took over possession of the disputed property and inducted their predecessor on ek sali basis. If it is so, in view of the exposition of the Division Bench in the case of Devu Rau Chavan v. Jasingrao Narayanrao Ghorpade, reported in 1961 (LXIV) Bom.L.R. 97, it will have to be held that in such a case, the rights of the predecessor of the Respondents as tenant will remain unaltered even after the appointment of the Court Receiver and he, in turn, taking over possession of the suit land. If it is so, the predecessor of the Respondents

has become deemed purchaser on 1st April 1957. In such a case, the question of giving intimation after the landlord was handed over constructive possession of the suit lands on 26th June 1974 does not arise. Non-sending of such intimation will make no difference to the statutory rights, which have crystalised in favour of the tenants. Viewed in this perspective, the conclusion reached by the Tribunal that it was not necessary to give intimation for the tenants cannot be taken exception to. In that sense, one of the grounds pressed into service on behalf of the Petitioners to hold that the purchase in favour of the tenant has become ineffective cannot be sustained.

5. That takes us to another ground, which is pressed into service on behalf of the Petitioners that the purchase has become ineffective. It was stated that the tenant was holding the land far in excess of the ceiling limit. The first authority, as well as the appellate authority, has found that the total holding of the tenant was 23 acres 32 gunthas in Gut No. 25A, the suit land, and in addition, another land as tenant, as

well as owner, at Solapur admeasuring 24 acres 21 gunthas. If the aforesaid entire land is to be held as jirayat land, then, possibly, the tenant may be entitled to retain the same, because the ceiling area provided in section 5, insofar as jirayat land is concerned, is 48 acres. However, in the present case, the finding of fact reached by the two authorities below in favour of the Petitioners is that the land came within the command of canal area and for which reason, the authorities proceeded on the assumption that the entire 47 acres 21 gunthas was irrigated land for the purposes of calculating the ceiling area. At the same time, the authorities have recorded as of fact that the tenant has not brought whole land under irrigation of canal though the same falls within the command of canal area. However, the authorities have not further ascertained as to what would happen if only small portion of the land has been brought under cultivation under irrigation of canal. In the event the authorities were to reach at the finding that about 12 acres or more area out of the entire land held by the Respondents has been brought under canal irrigation, in that event, perhaps,

the Respondents tenants will fail and the Petitioners would succeed, because by virtue of section 5 of the Act, the ceiling area in respect of partially irrigated land is specified as 12 acres. However, this inquiry has not been done by the two authorities below, nor the revisional authority has addressed itself to this aspect of the matter. In such a case, the only course open for this Court is to relegate the parties before the appellate authority to record a clear finding as to how much area of land held by the Respondents tenants on the relevant date was brought under canal irrigation. As mentioned earlier, if the authority finds that the Respondents tenants have brought 12 acres or more than 12 acres of area under canal irrigation, then, the view taken by the authorities below that the purchase has become ineffective will have to be sustained. For this limited purpose, this writ petition will have to be partly allowed and remand ordered before the appellate authority, who, in turn, will permit the parties to adduce further evidence, if required, and decide the said issue on its own merits in accordance with law. The appellate authority

shall finally dispose of the remand proceedings as expeditiously as possible preferably within six months from the date of receipt of writ of this Court.

6. Petition allowed on the above terms. No order as to costs.

7. Parties to act on the authenticated copy of this Judgment.